

**IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION**

UNITED STATES OF AMERICA

v.

BENJAMIN S. FOSTER

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CASE NO: 3:07-CR-150-MHT

UNOPPOSED MOTION TO CONTINUE TRIAL

NOW COMES the Defendant, **BENJAMIN S. FOSTER**, by undersigned counsel, pursuant to 18 U.S.C. 3161 §§ (h)(8)(A) and (h)(8)(B), and respectfully moves the Court for an Order continuing this matter from the November trial term. In support of this motion, the Defendant would show the following:

1. This case is currently scheduled for trial on November 5, 2007.
2. The instant matter also involves alleged conduct which occurred in the Northern District of Alabama. Mr. Foster has indicated that he desires to resolve this matter through a plea pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure (FRCP).
3. Before the parties can agree upon the terms of a plea agreement, Assistant United States Attorney Matthew Shepherd must coordinate the resolution of this case with the Northern District of Alabama pursuant to FRCP Rule 20. Therefore, it will not be possible to resolve this case prior to the consent date for entering pleas pursuant to FRCP 11(c)(1)(C).
4. It is to Mr. Fosters' benefit and judicial economy to enter a plea only after

Mr. Shepherd is able to complete the agreement, pursuant to FRCP 20, which will allow Mr. Foster and the United States to resolve all pending cases in one proceeding.

5. Therefore, Mr. Foster moves for a continuance to allow sufficient time to resolve all pending cases pursuant to FRCP 20.

6. The United States, through Assistant United States Attorney Matthew Shepherd, does not oppose this request.

7. While requests for a continuance are addressed to the sound discretion of the trial court, *United States v. Darby*, 744 F.2d 1508, 1521(11thCir. 1984),*reh'g denied* 749 F.2d 733, *cert. denied*, 471 U.S. 1100 (1985), undersigned counsel feels that, in this case, the ends of justice will be served by allowing the government and the defense adequate time to resolve all pending cases pursuant to FRCP Rule 20.

WHEREFORE, for the reasons set forth above, the Defendant moves this Court to issue an Order continuing the November 5, 2007, trial date.

Dated this 17th day of October, 2007.

Respectfully submitted,

s/ Michael J. Petersen
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CERTIFICATE OF SERVICE

I hereby certify that on October 17, 2007, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Matthew Shepherd, Esq.
Assistant U. S. Attorney
131 Clayton Street
Montgomery, AL 36101

Respectfully submitted,

s/ Michael J. Petersen
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